

MINUTES
CLAY COUNTY BOARD OF ADJUSTMENT
5:00 PM, TUESDAY, JANUARY 26, 2016
MEETING ROOM B, CLAY COUNTY COURTHOUSE

Members Present: Greg Anderson, Perry Bushaw, Pamela Harper

Members Absent: Paul Krabbenhoft

Others Present: Tim Magnusson, Colleen Eck, Steve Beitelspacher, Lynette Conmy, Bruce Conmy, Bruce Jaster

On motion by Pamela Harper, seconded by Perry Bushaw, and unanimously carried, the Board approved the agenda as written.

On motion by Perry Bushaw, seconded by Pamela Harper, and unanimously carried, the Board approved the minutes from December 15, 2015 as written.

Greg Anderson called the meeting to order at 5:00 p.m. and read the agenda.

BRUCE AND LYNETTE CONMY - REQUEST FOR VARIANCE

The applicants are seeking approval of a variance to allow a septic tank to be located closer to a structure than normally allowed. The Clay County Development Code currently requires a septic tank to be set back a minimum of 10 feet from a structure. The affected property is Lots 3 thru 6, Hidden Valley Shores Subdivision, located in the NE Quarter, Section 12, T138N, R44W (Parke Township), in the Shoreland-Residential (S-R) Zoning District.

On motion by Pamela Harper, seconded by Perry Bushaw, and unanimously carried, the Board opened the public hearing.

Tim Magnusson, Planning Director, provided an aerial view of the property. The property originally had an onsite septic system with a single tank. In 1995, the property was included in a community septic system and a second septic tank was installed. In 2001, when an addition was built on a slab, the contractor marked on the sketch plan that the addition would be located 12 feet from the septic tank. When the homeowners recently had a septic certification inspection done, it was found that the new addition was only four feet from the original septic tank. For this reason, the system did not pass its compliance inspection. The system is functional, and the applicants are requesting a variance to allow the one tank to remain in its current location until such time that it needs to be replaced or the septic system needs to be repaired. Magnusson noted that the primary reasons for the tank to structure setback is to ensure there is sufficient room to work on the tank if need be, and also to ensure that there is no seepage of septage into the structure if the tank should leak. By granting this variance the County will ensure that the system is brought into compliance when the tank is replaced or there is other repair work conducted on the septic system. The Environmental Health staff do not believe that it is as big an issue as it could be because the addition is slab on grade with no chance of septic seepage into a basement. The location of the tank does not have any more impact on the lake at the current location.

The staff recommendation is to grant a variance to allow a reduction of the required setback for a septic tank to a structure from 10 feet to 4 feet. Said reduction would allow a septic tank to remain in place until such time there is a need to replace it or repair it. At that time, the tanks would need to be brought into code.

Bruce Jaster, Environmental Health, stated that he has a report from a septic system maintainer saying the tanks are still in good shape. He commented that he would not be opposed to granting a variance for this request. He noted that many septic systems are good for 30 years, but sometimes they will see one that is rotted after only five to six years.

The applicant, Lynette Conmy, stated that there are seven houses hooked into the community septic system. Conmys purchased this residence in 1993, the new system was installed in 1995, and they had their addition constructed in 2001. Their contractor located the one tank at 12 feet from the addition, but did not find any paperwork filed for a second tank on the site.

Steve Beitelspacher, Assistant County Attorney, stated that the circumstance was not created by the landowner, but by the contractor; however, the landowner is responsible for their land. Greg Anderson noted that the County must have missed the requirement for a septic certification when the addition was constructed, as well. The landowners noted that Dewey's Septic Service found the tank by the house when he was out pumping. It is located right where a bush has not grown. The Conmys may be selling the residence to their kids and came across this setback error when they were getting everything in order in case they sell the property. They would hate to dig up their yard and landscaping at this point.

Greg Anderson stated that after a variance is recorded for the setback, it would show up in a title search of a parcel and should be disclosed.

On motion by Perry Bushaw, seconded by Pamela Harper, and unanimously carried, the Board closed the public hearing.

On motion by Perry Bushaw, seconded by Pamela Harper, and unanimously carried, the Board approved the request for a variance from Bruce & Lynette Conmy to allow a reduction of the required setback for a septic tank to a structure from 10 feet to 4 feet with the following condition/reasons:

- 1) Septic tank will be allowed at current location (4 feet from the structure) until such time the septic system requires repair or needs to be replaced. At such time, system needs to be brought into compliance.**
- 2) The proposed variance is in harmony with the general purpose of the zoning district and intent of the Development Code.**
- 3) The proposed variance constitutes a 60% reduction in the required setback.**
- 4) The circumstances related to this request constitute a "practical difficulty" related to a contractor's error.**
- 5) The variance would not alter the essential character of the locality.**

On motion by Perry Bushaw, and seconded by Pamela Harper, the meeting was adjourned at 5:25 p.m.